

① Kelly Chapman
② file; Combe Fill (CERCLA)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

238322



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In re

Case No. 81 B 12024 (BRL)

COMBE FILL CORPORATION,

: NOTICE OF HEARING ON
TRUSTEE'S APPLICATION
TO ABANDON LANDFILL
SITES AND RECORDS

Debtor.

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PLEASE TAKE NOTICE that a hearing will be held before the Honorable Burton R. Lifland, Bankruptcy Judge, in Room 234 of the United States Courthouse, Foley Square, New York, New York, on the 12th day of June, 1985, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, on the Trustee's application to abandon (1) the Debtor's landfill site in Chester-Washington Townships, Morris County, New Jersey; (2) the Debtor's landfill site in Mount Olive Township, Morris County, New Jersey; and (3) all business and dumping records for each site.

PLEASE TAKE FURTHER NOTICE that a complete copy of the Trustee's application to abandon may be inspected at the office of the Clerk of the Bankruptcy Court, Room 230, United States Courthouse, Foley Square, New York, New York, during regular Court hours. Objections, if any to the application must be filed with the Clerk of the Bankruptcy Court and the undersigned no later than June 7, 1985.

Dated: New York, New York
May 20, 1985.

BRUCE D. SCHERLING, P.C.
Attorneys for Trustee
6 East 45th Street
New York, New York 10017
(212) 972-8100
(212) 682-2184

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re

Case No.81 B 12024(BRL)

COMBE FILL CORPORATION,

: APPLICATION FOR ORDER
AUTHORIZING TRUSTEE TO
ABANDON LANDFILL SITES
AND RECORDS

Debtor.

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TO THE HONORABLE BURTON R. LIFLAND, BANKRUPTCY JUDGE:

Bruce D. Scherling, Trustee, by his attorneys,
Bruce D. Scherling, P.C., as and for his application for an
Order authorizing the Trustee to abandon two landfill sites
owned by the Debtor, respectfully sets forth and alleges:

1. On October 19, 1981, applicant was
appointed Interim Trustee of Combe Fill Corp. ("Debtor")
pursuant to 11 U.S.C. 15701(a), qualified, became Trustee on
December 2, 1981 pursuant to 11 U.S.C. 702(d) and currently
serves in that capacity.

2. This application is submitted for an
Order authorizing applicant to abandon two landfill sites in
Morris County, New Jersey, and the accounting and dumping
records for each pursuant to 11 U.S.C. 554.

3. The Debtor was a corporation wholly owned and operated by Combustion Equipment Associates, Inc. ("CEA"), formerly a debtor in a Chapter 11 proceeding before this Court (Cases Nos. 80 B 11757-11759). The Debtor operated two landfill sites in Morris County, New Jersey, one which straddled Washington and Chester Townships (Combe Fill South) and one in Mt. Olive Township (Combe Fill North). It is those two sites and their respective accounting and dumping records that the Trustee seeks to abandon.

4. Notice of this application has been given to the United States Environmental Protection Agency ("EPA") and the New Jersey Department of Environmental Protection ("DEP"). Each agency will be given ample time to inspect and remove such records as they may require.

INCONSEQUENTIAL VALUE OF SITES

Combe Fill South

5. The Combe Fill South site has been decertified by the New Jersey Public Utilities Commission and can therefore no longer be operated by the Trustee or any prospective buyer under the landfill license issued to the Debtor. The Trustee has realized the only possible value of said site to the estate through three sales of real property. On December 21, 1981, the Trustee conveyed 55 undeveloped acres

of the Combe Fill South site to an adjoining horse farm owner, Virginia Eitner, for \$85,300. On December 16, 1983, the Trustee conveyed an additional 17 acres of the site to Mrs. Eitner for \$19,407. On December 29, 1983, the Trustee conveyed approximately 8 acres of land and certain improvements thereon to J. Filiberto Sanitation Inc. for \$45,000.

6. After consultations with various appraisers and real estate consultants, the Trustee has determined that no further sales are possible and that the site has no possible commercial uses.

Combe Fill North

7. The Combe Fill North site in Mt. Olive, New Jersey, has from the outset of the estate had no value which could be realized by the Trustee. As the site was fully filled, there was no acreage which could be sold to adjoining property owners or other interested parties. Discussions with an adjoining owner as to the use of 15 to 20 acres as a transfer station have not produced any offers to purchase. The Trustee has also consulted with purchasers and real estate consultants with respect to the possible use or sale of this site and has been advised that it has no value or possible commercial uses.

BURDENSOME TO THE ESTATE

8. The retention of the two sites and their records is burdensome to the estate. The Trustee must maintain liability insurance for each site. Miscellaneous disbursements are necessary to repair gates, locks and other security equipment and to maintain debtor records. Legal problems and tasks are continually presented because of ongoing investigations and site projects by the EPA and DEP.

Trustee's Right to Abandon

9. A footnote by the Supreme Court in its recent decision in Ohio v. Kovacs 105 S. Ct. 705 (1985) clearly contemplates and sanctions a Trustee abandoning landfill sites which are burdensome to the estate or of inconsequential value to the estate (id. at 711, fn.12). Applicant submits that the Kovacs footnote puts to rest any questions as to a Trustee's rights to abandon a landfill site raised by the Third Circuit Court of Appeals decision in The Matter of Quanta Resources Corp., 739 F 2d 913 (1984).

10. Moreover, the issues originally raised by Quanta have been mooted in this proceeding by the Order entered on January 23, 1984 incorporating the compromise agreed upon by the DEP and the Township claimants. Pursuant to the Order,

the Trustee has paid all pre-petition tax claims to local Township claimants, has apportioned and paid \$50,000 to said Township claimants for post-petition taxes, and has paid \$50,000 to the Treasurer of the State of New Jersey, in full and final settlement of State clean-up claims. The Order also releases the estate and the Trustee from any and all claims arising out of the operation of the landfill. Accordingly, any objections to abandonment which might be based on clean-up cost claims have been precluded by this court-ordered settlement.

11. No prior application for the relief sought herein has been made to this or any other Court.

WHEREFORE, applicant respectfully requests that this application for an Order authorizing the Trustee to abandon the Combe Fill South and Combe Fill North landfill sites and the accounting and dumping records for each be granted in all respects, and for such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
May 20, 1985.

Bruce D. Scherling, Trustee

BRUCE D. SCHERLING, P.C.
Attorneys for Trustee
6 East 45th Street
New York, New York 10017
(212) 972-8100

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

Case No. 81 B 12024 (BRL)

COMBE FILL CORPORATION,

AFFIDAVIT OF SERVICE

Debtor.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MARIE CORRARO, being duly sworn, deposes and says:

Deponent is not a party to this action, is over 18 years of age and resides in New York County, State of New York.

On May 20, 1985, deponent served a true copy of the Notice of Hearing on the Trustee's Application to Abandon Landfill Sites and Records upon those creditors and other interested parties at their respective addresses as set forth on the annexed list by depositing a true copy of same enclosed in a post-paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Marie Corrado
Marie Corrado

Sworn to before me this
20th day of May, 1985.

Notary Public

GUSTAV P. RECH
Notary Public, State of New York
No. 30-4811525
Qualified in Nassau County
Term Expires March 30, 1996

✓
J. Filiberto Sanitation, Inc.
c/o Gary S. Rosensweig, Esq.
Schwartz, Tobia & Stanziale
141 South Harrison Street
East Orange, N.J. 07018

Audit Section
Dept. of Finance of the
City of New York
Room 803
139 Centre Street
New York, New York 10013

Anderson, Russell, Kill & Olick
Attorneys For Combe Fill Corp.
666 Third Avenue
New York, New York 10017

Arthur M. and Carrie M. Tingue
c/o Harmon H. Lookhoff, Esq.
222 Stelle Avenue
Plainfield, New Jersey 07060

Barry I. Markowitz, Esq.
50 E. Main Street
P.O. Box 460
Chester, New Jersey 07930

✓
Combustion Equipment Associates, Inc.
c/o Anderson Russell Kill & Olick
666 Third Avenue
New York, New York 10017

✓
Gregory T. Halpert, Esq.
Office of Regional Counsel
United States Environmental
Protection Agency
26 Federal Plaza
New York, NY 10278

✓
Hugh J. McClusky, Esq.
Ribis, McCluskey, Ruane,
Graham & Decottis
636 Marvis Turnpike
Short Hills, New Jersey 07078

Paul H. Schneider
Deputy Attorney General
Dept. of Law and Public Safety
Environmental Protection Section ✓
Richard J. Hughes Justice Complex
C.N. 112
Trenton, N.J. 08625

Blossom A. Peretz
Deputy Attorney General
Dept. of Law and Public Safety.
Consumer Affairs and Energy Sec. ✓
1100 Raymond Blvd.
Newark, N.J. 07102

Stephen H. Shaw
Township Attorney for ✓
Washington Township
360 Hawkins Place
Boonton, N.J. 07005

Herbert A. Vogel
Township Attorney for
Township of Mt. Olive ✓
Maple Avenue at Miller Road
Morristown, N. J. 07960

Tax Collector
Washington Township
Morris County
Municipal Building
Long Valley, N.J. 07853

Mr. A. O'Brien
Borough Manager
Borough of Mountain Lakes
130 Ball Road
Mountain Lakes, N.J. 07046

Furnival Machinery Co.
Main Office
2240 Bethlehem Pike
Route 301
Hatfield, Pa. 19440

William Naddeo
Associates Capital Services of
New Jersey
475 Market Street
Elmwood Park, N.J. 07407

Treasurer, State of New Jersey
Dept. of Environmental Protection
Solid Waste Administration
32 East Hanover Street
Trenton, New Jersey 08625

Treasurer, State of New Jersey
Dept. of Environmental Protection
Solid Waste Administration
John Fitch Plaza
C.N. 027
Trenton, New Jersey 08625

Cornelius Blackshear
United States Trustee
226 Federal Plaza
New York, N.Y. 10007

Tax Collector
Township of Chester
P.O. Box 483
Chester, N.J. 07930

N.J. Bell Telephone Co.
P.O. Box 25
Elizabeth, N.J. 07215

Div. of Adm. Procedure
Office of Adm. Law
C.N. 301
Trenton, N.J. 08625

Mr. John Rusman
12 Bellview Place
Palisades Park, N.J.
07650

Combe Equipment Corp.
Parker Road
Chester, N.J. 07930

State of New Jersey
Division of Taxation
C.N. 22
Trenton, N.J. 08646

Tax Collector
Township of Mt. Olive
P.O. Box A
Budd Lake, N.J. 07828

N.J. Dept. of Labor & Ind.
Employment Security Agency
Trenton, N.J. 08625

N.J. Telephone Co.
14 Mine Street
Flemington, N.J. 08822

Van Doren Oil Co.
U.S. 22
Whitehouse, N.J. 08888

Jersey Central Power & Light
Madison Ave. & Punchbowl Rd.
Township of Morris
Morris County, N.J.

Internal Revenue Service Cen.
1040 Waverly Avenue
Holtsville, N.Y. 00501

Wayne H. Weiner, Esq.
Town of Morristown
110 South Street
Morristown, N.J.

Mr. Charles A. Wolfe
Route 1
Climax Springs, Mo. 65324

Salmon Oil Company
Route 183
Netcong, N.J. 07857

Wehran Engineering
200 Route 17 South
Mahwah, N.J. 07430